IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 899 OF 2004.
IN
FIRST APPEAL ST.NO.5599 OF 2004.

The State of Maharashtra & others. ... Applicants.
Versus.
Pritesh Shantilal Lapasia. ... Respondent.

Shri A.A.Kumbhakoni, Associate Advocate General with Shri A.R.Patil, A.G.P. for the Applicants.

Shri Lalit V.Jain for the Respondent.

CORAM : ABHAY S.OKA, J.

DATED : 8th March, 2007.

P.C.:

1. Heard the learned Associate Advocate General for the Applicants and the learned Advocate for the Respondent. There is a delay of 405 days in preferring the Appeal.

2. In paragraph 2 of the Application for condonation of delay the following averments have been made:

> "2. The applicant states that the major delay has been caused at initial stage in making application for Certified copy. The application for certified copy could not be made immediately because of non-availability

of the funds for the same."

In view of the said averments, the Applicant was directed to file further affidavit. Accordingly further affidavit of one Shri R.L.Mahale has been filed. In the said further affidavit it is disclosed that the statement made in the application for condonation of delay that the certified copies were applied for on 2nd December 2002 is incorrect and in fact the application for certified copy was made on 7th October 2002 i.e. within 12 days from the date of passing of the decree. Along with the affidavit, a letter dated 17th February 2007 sent by the Government Pleader, City Civil Court, Mumbai is placed on record in which it is stated thus:

> "I may also point out that during certain periods of the year, the Office of the Government Pleader, does not have sufficient funds even to apply for and obtain the certified copies of Judgment/Decree due to want of sanction from the Government and for want of adequate funds. Many times, the Government Pleader or the Head Clerk has to pay for these expenses by themselves."

In view of the said statement, this Court requested the learned Associate Advocate General to appear in the

matter. The learned Associate Advocate General pointed out that from the financial year 2004-2005, a separate grant is being released to the office of the Government Pleader, City Civil Court, Mumbai for the purpose of purchasing Court fee stamps. He has submitted a copy of the chart which shows that in the financial year 2006-2007 the State Government released a grant of Rs.3000/- for purchasing Court fee stamps and practically the entire amount has been consumed and the balance available is only of Rs.2/- as on 7th March 2007. The learned Associate Advocate General pointed out that for the earlier two financial years the substantial part of the grant for this purpose remained unutilised and therefore, during the current financial year, grant of only Rs.3000/- was released. He states that considering the exigencies, the State Government will increase the amount of grant in the next year or in the years to come. He assures the Court that the State Government will make every endeavour to ensure that the applications for obtaining certified copies of the orders and decrees are made expeditiously and the filing of such applications in any event will not be delayed on account of lack of availability of funds. In view of the assurance given to this Court, no further direction in that behalf is necessary.

3. The Application for condonation of delay has

been strongly opposed by the Advocate for the Respondents.

4. From the perusal of the averments made in the Application and in the supplementary affidavit, it can be seen that a case has been made out for condonation of delay subject to payment of costs to the Respondent.

5. Application is allowed in terms of prayer clause (a), subject to the Applicant paying costs of Rs.1000/- to the Respondent within a period of six weeks from today. Place the Appeal for admission on 16th April 2007.

Judge.